UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO OFFICE

WESTERN CAB COMPANY

and **Cases 28–CA–131426**
28–CA–132767
28–CA–135801

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL–CIO/CLC

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for the General Counsel.

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Mariana Padias, Esq.
(United Steelworkers International Union)
for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARIEL L. SOTOLONGO, Administrative Law Judge. This case primarily concerns changes that Western Cab Company (Respondent) allegedly made unilaterally, without first notifying and bargaining with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC (Union or Charging Party), which has represented a unit of employees of Respondent since 2012. The complaint also alleges that Respondent's managers made coercive and disparaging remarks to employees about the Union, or comments that indicated the futility of having a union, and that Respondent removed and barred from its premises all copies of a magazine which contained an advertisement directed to Respondent by the Union. At center stage among the allegations of unilateral changes is an allegation that Respondent engaged in discretionary suspension or termination of numerous employees without first bargaining with the Union under the doctrine first announced by the Board in *Alan Ritchey*, 359 NLRB No. 40 (2012).

In *Alan Ritchey*, subsequently rendered null and void ab initio by the Supreme Court in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the Board held that an employer whose employees are represented by a union must bargain with the union before imposing discretionary discipline during the "interim period" between the union's certification (or recognition) and the parties' first collective-bargaining contract. The issue before me is thus whether I should apply the principles of *Alan Ritchey*, despite its invalidation by the Supreme Court, or automatically apply prior Board doctrine.[1] For the reasons discussed below, and for the reasons discussed in my recent decision cited in fn. 1, I believe it reasonable to infer that the Board will likely reaffirm *Alan Ritchey*, and that I should proceed accordingly. The complaint also alleges that Respondent unilaterally made a change to its employee health care plan, but that change does not involve discipline, so it does not fall under the *Alan Ritchey* analytical framework.

I presided over this trial in Las Vegas, Nevada, on January 27–28, 2015, pursuant to a complaint and notice of hearing issued by the Regional Director of Region 28 of the Board on November 26, 2014, alleging that Respondent had violated Sec. 8(a)(1) and (5) of the Act by engaging in the conduct briefly described above.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent admits, and I find, that at all material times it has been a corporation with an office and place of business in Las Vegas, Nevada, where it has been engaged in providing taxicab services in the Las Vegas metropolitan area. In conducting its business operations, Respondent, in the 12 months ending on June 24, 2014, purchased and received at its Las Vegas facility, goods valued in excess of $50,000 directly from points outside the State of Nevada. During the same time period, Respondent, in the conduct of its business operations, derived gross revenues in excess of $500,000. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

Respondent also admits, and I find, that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

As described above, Respondent provides taxicab services for customers in the Las Vegas, Nevada metropolitan area. It employs approximately 430 taxi drivers, in addition to 15 to

[1] In my recent decision in *Kitsap Tenant Support Services, Inc.*, JD(SF)–29–15 (July 28, 2015), I discussed the dilemma faced by Board administrative law judges when confronted with *Alan Ritchey* issues, which is occurring with increasing frequency, in light of the fact that in *Noel Canning* the Supreme Court did not find that the Board had misconstrued the Act, but rather held that Board members who formed the majority in *Alan Ritchey* had been unconstitutionally appointed. This is an unprecedented scenario, which as discussed in my prior decision, calls on judges to decide whether to mechanically apply precedent that appears to be on its way out or read the proverbial "handwriting on the wall."

20 mechanics, 6 dispatchers and about 5 office workers, in addition to management. (Tr. 31).[2] Since March 26, 2012, the Union has represented a bargaining unit composed of all taxicab drivers employed by Respondent, excluding dispatchers, managers and supervisors as defined in the Act. Respondent and the Union have been engaged in collective-bargaining negotiations since 2012, and although they have reached tentative agreements on a number of issues, they have not agreed on a collective-bargaining agreement as of the present.

The complaint alleges, and Respondent admits, that the following individuals are supervisors and agents of Respondent: Janie Tobman Moore, President; Helen Martin, Secretary; Marilyn Moran, Director; Jean Tobman, Treasurer; Martha Sarver, General Manager; and Vladimir Grigorov, night shift Manager.

B. The Suspension and Termination of Numerous Employees

The complaint alleges, and Respondent admits, than in the 6-month period between January 1 and July 8, 2014, Respondent either suspended or discharged numerous bargaining unit employees.[3] Martha Sarver, Respondent's general manager, called as an adverse witness (under Fed. R. Evid. 6(11)(c)) by the General Counsel, admitted that Respondent exercised much discretion in determining whether to impose discipline and the severity of the discipline imposed. She testified that Respondent had no rigid rules governing the kind of discipline imposed, but rather considered several factors in determining what type of discipline, if any, to impose. Among the factors considered were the length of service of the employee (with more senior employees usually warranting milder discipline), the type of offense or infraction committed, whether the employee had been honest and forthcoming in reporting or admitting a problem, whether the infraction was the result of an honest mistake or willful conduct, and other mitigating factors. Moreover, Sarver testified that Respondent traditionally considered its employees to be "at-will" employees, and that Respondent was thus free to discharge employees as it saw fit. Nonetheless, Respondent usually, but not always, applied a progressive disciplinary system consisting of first issuing an employee a verbal warning, followed by a written warning, suspension, and then termination (Tr. 38–45; 61–65; 88–89).

In response to questions from the General Counsel, Sarver provided detailed explanations as to why some employees were terminated for conduct that only warranted suspensions, or even milder discipline, in other cases, with specific examples cited from the list of discharged or suspended employees introduced as GC Exhs. 10 and 11.[4] For the purposes of this case, however, the specifics as to why discipline was imposed, or the type of discipline imposed, are not germane to the theory of a violation under *Alan Ritchey*, which is what the General Counsel is relying on.[5] All that matters is that the record clearly shows that the discipline imposed was

[2] References to the transcript will appear as "Tr.," followed by the page number(s); General Counsel's exhibits will be referenced as "GC Exh.;" Respondent's exhibits will be referenced as "R Exh."

[3] The complaint alleges, and Respondent admits, that the period covered by the suspensions is January 28 to July 8, 2014, and the period covered by the terminations is January 1 to June 26, 2014. Evidence introduced at trial indicated that Respondent discharged 75 employees and suspended 46 employees during the period in question. (GC Exh. 10; 11)

[4] For example, see Tr. 55–56; 61; 65–66; 71–80; GC Exhs. 10; 11.

[5] There is no allegation or evidence that any of these employees, for example, were disciplined for engaging in union or protected activity, so the theory of "disparate treatment" would appear irrelevant under these

status-changing (i.e., suspensions without pay or terminations), and that Respondent exercised discretion in imposing such discipline—which it clearly and unequivocally did (Tr. 88–89). Also relevant is, of course, the fact that Respondent did not notify or bargain with the Union prior to imposing this type of discipline, which Respondent (Sarver) admitted, until July 2014 (Tr. 50; GC Exh. 9).

C. The Removal of the "Trip Sheet" Publication from Respondent's Premises

The Trip Sheet Magazine (TS) is a magazine published in Las Vegas every month around the first of the month, which contains information about what is going on in town, such as shows, conventions, special events, and the like. It also contains advertisements by numerous establishments such as hotels, restaurants, bars, lounges and adult-theme (strip) clubs. Some of the advertisements are directed at taxicab and limousine drivers in order to encourage—or lure—them to bring their fares or customers to these establishments, some offering rewards or tips (also called "referral" fees) for drivers to do so. Copies of TS magazines were introduced by the General Counsel as GC Exhs. 3 and 4. According to Joan Young, a taxicab driver called as a witness by the General Counsel who has worked for Respondent since June 2013, cab drivers often refer to the TS in order to be informed as to what is happening around Las Vegas. Indeed, Respondent's General Manager, Martha Sarver, admitted that the TS magazine is considered a "resource" by the taxi and limo industry. (Tr. 46). A well-informed taxicab driver, testified Young, usually gets better tips from customers. (Tr. 122–123; 129). Young admitted that she has received tips from clubs for bringing customers there, although she said she does not recommend any establishment, only telling customers what she has heard from others (Tr. 133–135).

The Union placed an ad aimed at Respondent in the August 2014 issue of the TS magazine.[6] According to Young, ever since she started working for Respondent, she usually found a stack of TS magazines in the drivers' room (or lounge) at Respondent's facility, copies that were placed there on or about the 1st of each month.[7] The exception to this were occasions when Young was not scheduled to work on the 1st of the month, and by the time she showed up to work a day or two later, all TS magazines were gone. There are numerous other places, however, where drivers can obtain copies of TS magazines, such as the airport and Union Hall. Young testified that in early August 2014, she could not find any TS magazines in the drivers' room, and asked "Gerard,"(last name unknown), who Young testified was an afternoon "supervisor," where the TS magazines were. Gerard replied that they (the TS magazines) were "not allowed in the premises (or property)" anymore, although he did not say since when. (Tr. 123–125; 127; 135–137). I would note that "Gerard" was not alleged as a Sec. 2(11) supervisor or Sec. 2(13) agent of Respondent, nor admitted by Respondent as such.

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circumstances. Moreover, as discussed below, since no union or protected activity is alleged, it is not the General Counsel's place to argue whether any of this discipline was justified (i.e., for "cause") or not.

[6] The ad reads: " HEY WESTERN CAB! We aren't asking for too much—just to be treated like other Vegas taxi drivers:

- Fair Wages and benefits
- An end to unfair & discriminatory discipline
- Respect & dignity behind the wheel

We're proud of the work we do and **deserve** a fair contract now!

United Steelworkers" (GC Exh. 3(e))

[7] The drivers' room is where drivers go to at the end of their shifts, to do paperwork or just to rest. (Tr. 31–32).

The General Counsel alleged in the complaint that Respondent banned the TS magazine from its premises in response to the Union's ad in the August 2014 issue. Curiously, neither the General Counsel nor the Union introduced *any* evidence showing that Respondent knew in early August 2014 that the Union had placed an ad in that month's issue of the TS magazine. Indeed, neither the General Counsel, who called Sarver (Respondent's General Manager) as its witness, nor the Union, ever asked Sarver if she or any other official of Respondent had ever seen the Union's ad. Sarver, who spent the longest time on the stand than any other witness, had a different explanation for the absence of the TS magazine in their drivers' room. According to Sarver, starting in 2009, she requested TS Magazine to stop delivering its issues at Respondent's facility, and disposed of them any time she saw them. The reason was that many of the ads in the TS magazine aimed at taxi drivers were offering rewards to lure them into bringing or "diverting" customers to their establishments, something that Sarver testified is illegal under Nevada law and Las Vegas ordinances—as well as contrary to Respondent's policy. Indeed, Respondent introduced into evidence copies of these statutes and ordinances that indicate that the practice of "diverting" customers is prohibited by law or ordinance (Tr. 89–94 R. Exhs. 4; 5). Sarver conceded that she never had put the policy banning the TS magazine in writing, and explained that is was difficult to police such policy because the drivers could pick up the magazine(s) anywhere and leave them in the drivers room or in the taxis. Additionally, she testified that the door to the drivers' room is not locked and that anyone could walk "off the street" and drop off magazines (something Young admitted), suggesting that TS magazine had not honored her request to stop delivering magazines at Respondent's premises.

I found Sarver's testimony to be straight-forward and credible, and her explanation regarding Respondent's rationale for not welcoming the presence of TS magazine in its premises to be reasonable and persuasive.[8] While I also found Young to be generally credible, I note that since she was not employed by Respondent prior to June 2013, she could not address Sarver's testimony about the existence of a policy toward TS Magazine since 2009—and no other witness testified about this matter. Additionally, I note that while Young believed that the absence of TS magazines at Respondent's premises a couple of days after the first of the month was the result of the supply running out, it could have been the result of Respondent confiscating and disposing of said magazines shortly before her assigned shift began. Since Young was not around on those occasions, her testimony as to what caused the absence of said magazines (prior to August 2014) is not reliable. Accordingly, I credit Sarver's testimony as to why TS magazines were barred from Respondent's premises.

D. The Changes to the Employee Health Plan

Sarver testified that in December 2013, Respondent's insurance agent notified Respondent that under the provisions of the Affordable Care Act (ACA), effective January 2014, employees would be eligible to sign up for healthcare insurance after sixty (60) days on the job. Previously, Respondent had provided healthcare insurance to employees after 1 year of

[8] Even a casual look at the samples of the TS magazine introduced in the record reveals the presence of ads enticing cab drivers to bring customers to these establishments, often under the direct or at least implied promise of rewards for such drivers. As testified by Saver, this conduct may be considered a "diversion" of customers from their intended destinations, and may be unlawful under Nevada laws and Las Vegas ordinances.

employment. In order to comply with ACA, Sarver testified, Respondent began notifying its employees in February 2014 of the changes in the healthcare eligibility waiting period, first by posting notices on its bulletin boards, and then by holding an employee meeting in April 2014. Additionally, Respondent also notified employees of these changes by placing notices in the "trip sheets" or trip logs (not to be confused with the "Trip Sheet" magazine discussed above) that drivers must fill out at the conclusion of their work day. Sarver admitted that Respondent implemented these changes without first notifying and bargaining with the Union. (Tr. 35–38; 84–87; R. Exhs. 1; 2; 3)

E. The Statements Allegedly Made by Vladimir Grigorov

Young testified that sometime in early August 2014, Respondent's drivers held a union meeting. Sometime after the meeting, Young went to the driver's room to do some paperwork. While there, she ran into another driver, Carlos Pena, who had not been at the meeting. Young told Pena that he had missed a very good meeting, and which point Grigorov, who is Respondent's night shift manager (and admitted supervisor), chimed in and told them that they did not need a union, or that he did not understand why they needed a union.[9] Neither Grigorov nor Pena testified.

In view of the changing phraseology used by Young, as discussed in fn. 8, I conclude that what Grigorov said was "you don't need a union," and then said "I don't understand why you need a union," but did not ask "why do you need a union?," which is something that Young added at the very end of her testimony, making it less credible.

F. The Statement Made by Respondent at the February 2014 Meeting

It is undisputed that on February 4, 2014, Respondent and the Union had a bargaining meeting under the auspices of the Federal Mediation and Conciliation Service (FMCS), at the Federal mediator's office in Las Vegas. Present at this meeting for Respondent were Helen Martin, Marilyn Morgan, Martha Sarver, and Respondent's counsel, Gregory Smith.[10] Present for the Union were Chris Youngmark, assistant to the Director for District 12, United Steelworkers, Chris Youngmark and employees Gezahegne Teffera and Chris, whose last name appears to be Musfin, although this is not clear, who were part of the Union's bargaining committee. According to Youngmark, during the negotiating session, Moran explained the company's history, which was founded by her father and had always been a family-run business. Moran repeatedly stated that they (Respondent) did not like change and that this was very hard for the family and company. Youngmark testified that shortly after saying these things, Moran looked directly at Teffera and said "why are you doing this to us?" I found Youngmark to be a straight-forward witness whom I found to be credible, and thus credit his testimony. In so doing,

[9] Intitially, Young testified that Grigorov had said that they did not need a *meeting*, that he did not understand why they needed a *meeting*. (Tr. 121). At the conclusion of Young's testimony, I asked her to clarify, since Grigorov's comments did not seem particularly noteworthy, or comporting to the allegations of the complaint. At this point, Young clarified that Grigorov had said that they did not need a *union*, adding that he then asked "what do you need a union for? (Tr. 139–140).

[10] Also present as part of Respondent's entourage were Marilyn Moran's son (name unknown) and brother in law, whose name appears to be John Moran, although this is not clear (Tr. 155)

I note that Moran did not testify, and Sarver, who was present at this meeting, testified but was not asked about this issue.[11] (Tr. 153–156)

Teffera's testimony differed from Youngmark's in some respects, in that it appears from Teffera's testimony that it was Helen Martin who directed the "why are you doing this to us" comment to him, as opposed to Marilyn Moran—although this is not completely clear.[12] Additionally, Teffera testified that another union agent, Bill Locke, was also present at this bargaining session at the FMCS. It is clear, however, based on Youngmark's testimony, which is supported by his bargaining notes, as well as Locke's testimony, that it was Youngmark who was the Union's only representative at this meeting. (Tr. 164–165; 187–191; R. Exh. 44).[13]

On balance, in light of Youngmarks's credible testimony, I find that the events transpired as testified by him, and that it was Moran who made the comments in question to Teffera during the February 4, 2014 bargaining session.

Discussion and Analysis

I. The *Alan Ritchey* Issue Regarded the Disciplined Employees

As described in the prologue and facts section, it is undisputed that during the January to July 2014 time period, Respondent either terminated or suspended a total of one hundred twenty one (121) cab drivers. It is also undisputed that Respondent did not notify or bargain with the Union prior to doing so. The General Counsel argues that under the Board's ruling in *Alan Ritchey*, Respondent had a pre-imposition obligation to bargain with the Union regarding such disciplinary actions, and that by failing to do so, Respondent violated Sec. 8(a)(5) & (1) of the Act.

As noted above, *Alan Ritchey* was invalidated by the Supreme Court on constitutional grounds in *Noel Canning*, and it is therefore not proper precedent. Nonetheless, as I explained in my recent decision in *Kitsap Tenant Support Services*, issued on July 28, 2015 (cited in fn. 1, above), and as I further explain below, I find the Board's rationale in *Alan Ritchey* to be valid

[11] The complaint initially alleged Helen Martin as the individual who made the remarks addressed to Teffera, but the complaint was amended at the start of the trial to substitute Moran for Martin. I permitted the amendment over Respondent's objection, noting that if Moran was not available, I would allow Moran to testify out of order if necessary or would grant a continuance to permit her to testify on a later date if requested by Respondent. (Tr. 12–16) Respondent neither called Moran as a witness nor requested a continuance in order to do so.

[12] Teffera's testimony was extremely difficult to follow because he had a pronounced accent, as he acknowledged (Tr. 187, line 8), and his English syntax was at times poor. See, Tr. 187–194. Teffera speaks seven languages, and English is for him a second language. Indeed, Respondent made a motion to strike his testimony because of apparent contradictions or lack of clarity, a motion that I denied, ruling that it was ultimately a matter of credibility. (Tr.195–196). Although the General Counsel attempted to clarify some of Teffera's testimony, this effort was abandoned prematurely in my view, leaving an unclear picture as to who said what during the February 4 meeting. But for the testimony of Youngmark, who gave a far clearer account of what transpired at this meeting, the lack of clarity in Teffera's testimony could have proved fatal to the General Counsel's allegation, since he bears the burden of proof in these matters.

[13] Locke testified that he attended the first bargaining session in April 2014, when he assumed his duties as the Union's main negotiator in negotiations with Respondent. (Tr. 164–165). It should also be noted that while Youngmark's bargaining notes do not reflect the alleged comments directed by Moran at Teffera, he credibly explained that his bargaining notes are not a verbatim transcription of everything that occurs during negotiations (Tr. 222; R. Exh. 44).

and persuasive—and supported by prior Board precedent. I also believe it reasonable to infer that it will likely be reaffirmed by the Board in the near future. Accordingly, I will apply its principles to the present case.

As the Board noted in *Alan Ritchey*, an employer's obligation to notify and bargain with a union that represents its employees prior to unilaterally implementing discretionary changes that have a material, substantial and significant impact on employees' terms and conditions of employment is based on long-standing and well-settled principles, citing *NLRB v. Katz*. 369 U.S. 736 (1962); *Oneita Knitting Mills*, 205 NLRB 500 (1973); and *Washoe Medical Center, Inc.*, 337 NLRB 202 (2001), among other cases. In light of such precedent, the Board further reasoned that although the issue of an employer's pre-imposition obligation to bargain over discretionary status-changing discipline during the period prior to the parties' first collective-bargaining contract was one of the first impression, its conclusion that employers have such obligation was a logical sequential step in the evolution of Board law and doctrine in this area. It thus concluded that the Board had erred in mechanically adopting (sub silentio) the administrative law judge's decision to the contrary in *Fresno Bee*, 337 NLRB 1161 (2002), a decision which the Board called "demonstrably incorrect" in light of the above-cited precedents. I conclude that such rationale is applicable in this case, notwithstanding *Alan Ritchey*'s invalidation by the Supreme Court, which it did not on the basis that the Board had misinterpreted the Act, but rather on constitutional grounds unrelated to the merits of the case.

Applying such rationale in the present case, it is clear based on the evidence that Respondent discharged or suspended 121 employees without notifying or bargaining with the Union, and that in implementing such discipline Respondent exercised discretion in determining whether to impose discipline and in determining the type and severity of discipline imposed. Accordingly, I conclude that Respondent violated Sec. 8(a)(5) & (1) of the Act by this conduct. Respondent argues that *Alan Ritchey* is not proper precedent, as I have acknowledged, and that in any event it was wrongly decided. As discussed above, however, I believe *Alan Ritchey*'s rationale is valid and that it will likely be reaffirmed by the Board in the near future. Obviously, if I am wrong and the Board opts not to reaffirm the principles announced in *Alan Ritchey*, then this finding would be moot and Respondent would be found not to have violated the Act. In this regard I note that Respondent still would have an obligation to bargain about said discipline after its imposition, but there are no allegations that Respondent has refused to do so. Indeed, the evidence shows that Respondent has offered to bargain with the Union about the aforementioned disciplinary actions since July 2014.

Additionally, Respondent argues that even under the principles of *Alan Ritchey* it had no pre-imposition obligation to bargain because the Union had an affirmative obligation to request bargaining, which it did not do. I reject this argument since the Board plainly stated that employers have an affirmative obligation to *notify* unions prior to imposing discipline, in order to afford the unions an opportunity to prepare for bargaining by contacting the employees in question and ascertaining their side of the story. Likewise, it is no defense that the Union, during the period from January to July 2014, may have received word from time to time from bargaining unit employees that discipline was being, or had been, imposed on various employees, and had failed to demand bargaining. The *Alan Ritchey* doctrine, like in other scenarios that do not involve discipline but involve bargaining obligations before imposing

unilateral changes, imposes an affirmative obligation on employers to give notice and an opportunity to bargain. Accordingly, the Union's failure to demand bargaining in this case is of no consequence. In short, Respondent was obligated to give the Union specific notice regarding the employees it intended to discharge or suspend and some information regarding the intended discipline, as well as an opportunity to bargain, *before* it implemented the discipline.

Having found that Respondent violated Sec. 8(a)(5) & (1) by the above conduct, I now turn to the retroactive remedy sought by the General Counsel, which is a far more troubling part of the case. First, I note than in *Alan Ritchey* the Board decided to apply any remedies *prospectively*, citing the lack of notice employers in general had about this new policy, as well as the possible significant financial burden any such remedy might result in. Because Respondent's conduct in this case occurred post *Alan Ritchey* but prior to its invalidation by the Supreme Court in *Noel Canning* in June 2014, the General Counsel argues that Respondent was thus "on notice" that its conduct was unlawful and should therefore be subject to retroactive remedies. It would appear, however, that *Noel Canning* made such "notice" itself retroactively invalid.

Even if I were to accept its argument regarding retroactive application, however, there is in my view a significant obstacle to the remedy sought by the General Counsel. The General Counsel, in essence, advances a "strict liability" theory in support of the make-whole remedy it seeks for all 121 employees terminated or suspended in this case. In other words, regardless of what conduct on the employees' part may have caused Respondent to impose discipline, their discharge violated Sec. 8(a)(1) & (5) in light of Respondent's failure to notify and bargain with the Union, and therefore these employees must be made whole, that is, reinstated and awarded backpay. As I briefly discussed in my prior decision in *Kitsap*, supra, on page p. 15, fn. 27, Sec. 10(c) of the Act would appear to preclude the remedy sought by the General Counsel.

Sec 10(c) provides, in pertinent part, that "[n]o order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause." Curiously, the General Counsel's post-hearing brief does not even mention Sec. 10(c), ignoring the elephant in the room.[14] Both Respondent and the Charging Party, to their credit, make extensive arguments in their briefs regarding the applicability of Sec. 10(c) in this case, albeit reaching different conclusions, as would be expected.

As correctly pointed out by Respondent, in *Taracorp Industries*, 273 NLRB 221 (1984), and specially in *Anheuser-Busch, Inc.*, 351 NLRB 644 (2007), the Board discussed at length the implications of Sec. 10(c) as it applies to discharges of employees in the context of the employer's failure to bargain with the union regarding subjects or issues that resulted in, or contributed to, such disciplinary action. Both in *Taracorp* and in *Anheuser-Busch* the Board declined to order a make-whole remedy, noting that employees had engaged in misconduct that had no nexus to the separate unfair labor practice committed by the employer in its refusal to

[14] In all fairness, the Board does not mention Sec 10(c) in *Alan Ritchey* either, most likely because it opted to apply its holding prospectively, as discussed above, avoiding for the moment this thorny issue. If the Board decides to reaffirm the principles of *Alan Ritchey*, however, this issue will resurface and will need to be addressed, in my opinion.

bargain, thus concluding that Sec. 10(c) barred a make-whole remedy. In *Taracorp*, the Board stated:

> The Board possesses a certain latitude in fashioning remedies for unfair labor practices. Our discretion, however, is not absolute. Thus, we are bound by certain specific and general restrictions that limit our remedial authority. This is particularly true regarding our authority to impose a remedy of reinstatement and backpay. The clearest example of when a make-whole remedy of reinstatement and backpay is appropriate is where an employee is discharged or disciplined for engaging in union or other protected concerted activities. Such a remedy was imposed in the Board's first published decision and, since that time, has become the traditional means by which the Board seeks to neutralize employer discrimination. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941). This is achieved by restoring the status quo ante, thereby placing the employee in the position enjoyed prior to the discriminatory conduct. Conversely, an employee discharged or disciplined for misconduct or any other nondiscriminatory reason is not entitled to reinstatement and backpay even though the employee's Section 7 rights may have been violated by the employer in a context unrelated to the discharge or discipline. (footnotes omitted, at 222)

The Board goes on to define the meaning of Sec. 10(c):

> It is important to distinguish the term "cause" as it appears in Sec. 10(c) and the term "just cause," which is a term of art traditionally applied by arbitrators in interpreting collective bargaining agreements. Just cause encompasses principles such as the law of the shop, fundamental fairness, and related arbitral doctrines. Cause, in the context of Sec. 10(c), effectively means *the absence of a prohibited reason.* (Emphasis supplied)

Citing from *NLRB v. Columbus Marble Works*, 233 F.2d 406, 413 (5th Cir. 1956) the Board goes on to state:

> [under out Act] Management can discharge for good cause, or bad cause, or no cause at all. It has, as a master of its own business affairs, complete freedom with one specific, definite qualification: it may not discharge when the real motivating purpose is to do that which [the Act] forbids. *Taracorp*, at 222, fn. 8.

In *Anheuser-Busch*, the Board further explains:

> [T]he legislative history of Section 10(c) shows that Congress' purpose in enacting Section 10(c) was to insure that an employee who engaged in misconduct was subject to discipline for that misconduct. See *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 217 (1964) ('[the legislative history of [Section 10(c)] indicates that it was designed to preclude the Board from reinstating the individual who had been discharged because of misconduct')

I would note that in *Anheuser-Busch*, the Board distinguishes between employees whose employment is terminated, for example, as a result a layoff caused by the employer's failure to

bargain over subcontracting the work out of the bargaining unit—a violation of Sec. 8(a)(5) & (1) that justifies a make-whole remedy—and employees discharged for *cause*, i.e., misconduct, independent of a separate violation by the employer for failing to bargain with the union about how such discharges came to be. In *Anheuser-Busch*, the employer had, without bargaining with the union, installed surveillance cameras that led to the discovery that employees were using drugs, which was misconduct. Although the employer's failure to bargain over the installation of the surveillance equipment violated the Act, and it could be argued that but for such violation the employer would have never discovered the misconduct, such violation could not overcome the explicit prohibition contained in Sec. 10(c) barring reinstatement of employees who had engaged in misconduct. There are multiple other scenarios where employer violations of Sec. 8(a)(5) & (1) for unilateral changes that result in terminations warrant make-whole remedies. For example, when an employer unilaterally changes a work rule, and the violation by an employee of that new rule is the direct and proximate cause of the employee's discharge, that conduct is a violation of Sec. 8(a)(5) & (1) that warrants a make-whole remedy, because the new rule came into existence unlawfully, and thus the employee had not engaged in "misconduct" under the status quo. See. e.g,. *Uniserv*, 351 NLRB 1361 (2007).

Such is not the scenario in the present case. In the present case, there are no allegations, let alone a scintilla of evidence, that employees were disciplined for discriminatory reasons proscribed by the Act, that is, engaging in union or protected activity. Nor is there any evidence that Respondent unilaterally created new rules that were the direct and proximate cause of the employees' discipline. The undisputed testimony of Respondent's General Manager, Sarver, as well as documentary evidence (GC Exhs. 10; 11), shows the reasons for the terminations and suspensions were all related to conduct that the employees engaged (or failed to engage) in. This conduct, for example, included leaving the scene of an accident or failing to report one, unexcused absences, improperly filling out daily logs (intentionally or otherwise), failing to report fares, getting arrested (while on the job), tardiness, etc. The undisputed testimony of Sarver establishes that Respondent has been imposing identical discipline for similar reasons for years, long before the Union came into the picture. There is nothing unusual about such practice—such conduct is typical of the kind of conduct that triggers discipline by most employers. Contrary to what the General Counsel and Union appear to imply in their briefs, Respondent's lack of hard-and-fast written rules—and its adherence to an "at-will" philosophy of employment—does *not* mean that Respondent had no established rules or past practice. Indeed, it is its very exercise of *discretion* in the application of these rules that make the *Alan Ritchey* doctrine applicable in this case. Yet, it is precisely this novel application of employers' duty to bargain over discretionary discipline under *Alan Ritchey* that, in my view, creates an inevitable head-on conflict with explicit provisions of Sec. 10(c) of the Act as it applies to make-whole remedies for employees discharged or suspended for cause.

It is true, as the Union points out in its post-trial brief, that in *Anheuser-Busch* the Board stated "*termination of employment* that is accomplished without bargaining with the representative union is unlawful under Section 8(a)(5) and is not 'for cause,'" Id. at 648 (Emphasis supplied). Yet, it is notable than in giving an example of such violation, the Board uses the lay-off scenario described above, where employees did not engage in any conduct that was the *cause*—or trigger—for their discharge, but were rather passive victims of the employer's unlawful unilateral action. Those employees were not disciplined for their conduct—they were

laid off pursuant to the employer's unilateral subcontracting of their work. Thus, it is reasonable to infer that "termination of employment," as used by the Board in *Taracorp* is not the same as "suspended or discharged for cause" as defined by Sec. 10(c). As described above, the Board in *Taracorp*, in keeping with prior court rulings cited therein, states that "[c]ause, in the context of Sec. 10(c), effectively means *the absence of a prohibited reason.*" The "cause" or "reason" for the employees' discharge or suspension in this case was their *conduct*, none of which was protected by the Act. Conversely, the "cause" or "reason" of their discharge or suspension was *not* Respondent's unlawful failure to bargain—which was rather the *effect* or result of Respondent's conduct.[15] To hold that the discipline imposed in this case was not "for cause" because of Respondent's unlawful failure to bargain prior to imposing such discipline would, at best, define "cause" in an unnatural, even tortured, manner. At worst, such definition could be seen as an artifice devised to facilitate an obvious "end run" around the plain meaning of Sec. 10(c). In short, the term "for cause" should not be interpreted other than as properly defined by the Board in *Taracorp*, as described above, a definition that the Board itself correctly borrowed from the court of appeals in *Columbus Marble Works*. Applying such definition in this case leads to the inevitable conclusion that employees at issue here were disciplined as a result of their *conduct*, and thus "for cause" within the meaning of Sec. 10(c).

Accordingly, and for these reasons, I decline to order a make-whole remedy in this case.[16]

II. The Removal of the "Trip Sheet" Magazine from Respondent's Premises

The General Counsel alleges that Respondent removed—and barred—copies of the TP magazine from its premises in August 2014 because that month's issue contained an ad directed at and critical of Respondent. By engaging in such conduct, the General Counsel alleges, Respondent violated Section 8(a)(1) of the Act. For the following reasons, I disagree.

First, as discussed in the facts section above, I have determined that Respondent's policy toward the TP magazine has been in place since 2009, before the Union was around, as testified

[15] *Webster's* defines "cause," inter alia, as: 1. That which produces or effects a result; that from which anything proceeds, and without which it would not exist. 2. That which is the occasion of an action or state; ground; reason; motive.

[16] I am aware that in the absence of a make-whole remedy, a simple order to bargain after the discipline has been imposed is of little, if any value, rendering *Alan Ritchey* virtually meaningless. Yet the clear, explicit language of Section 10(c) as it relates to make-whole remedies for disciplinary actions constrains the Board in a manner it does not face regarding any other remedial orders to restore the status quo ante. *Alan Ritchey,* as I discussed in my decision in *Kitsap Tenant Support Services,* raises a host of questions and issues unanswered, and this issue is certainly at the very core. Perhaps the solution may lie in reexamining the need for pre-imposition bargaining in these disciplinary situations. As I posed in *Kitsap*, if, as the Board argues, the intent of the (*Alan Ritchey)* policy is to prevent the specter of impotency from being cast on a newly-certified union, it can be argued that the same goal may be achieved as effectively, but without the underlying cost and uncertainty, by requiring the employer to bargain after the imposition of discipline, with a required notice about such bargaining being sent to the entire bargaining unit. Indeed, this case illustrates some of the concerns I described in my *Kitsap* decision with regard to the burdens imposed on employers by *Alan Ritchey*, including difficulties in scheduling bargaining meetings and their obligation to maintain employees in the payroll while they complied with their bargaining obligation. It is a stretch to describe discipline as a "discreet" event when it happens 121 times in a short period, as happened in this case, and will happen in high-turnover "revolving-door," types of business.

by Sarver, whose testimony I credited and who provided a valid and persuasive justification as to why Respondent did not welcome such publication in its premises. As testified by Sarver and established by the evidence, the publication contains ads from commercial establishments in Las Vegas that clearly entice taxi drivers to "divert" customers from their original intended destinations to these establishments—for money or other rewards. This practice appears to be in violation of Nevada statutes and regulations, as well as Las Vegas ordinances. Even if they are not in violation of these laws, it is clearly in violation of Respondents stated policies. While it appears, based solely on Young's testimony, that copies of such magazines at times still found their way into the driver's room, this does not detract from my conclusion that such policy existed and was enforced, albeit not in an ironclad manner. Accordingly, the evidence fails to establish that this rule was established on enforced solely because of the ad placed by the Union in the August 2014 issue of TS magazine. Indeed, as discussed in the facts section, no evidence at all was adduced by the General Counsel or the Union that Respondent was aware of the Union had placed an ad in the August 2014 issue—or that it knew that it early August, when the issues were removed. The General Counsel argues that such knowledge must be inferred, but in view of the fact that the General Counsel bears the burden of proof in this matter, such inference is too large of a leap, in view of all the circumstances.

Secondly, even if I were to infer such knowledge, it is difficult to ascertain what the General Counsel's theory of a violation is. The General Counsel cites no cases directly on point that involve the barring or removal of a commercial third-party publication (not a union publication or literature) such as TS magazine for alleged antiunion reasons. Instead, the General Counsel argues that pursuant to *Roadway Express*, 279 NLRB 302, 304 (1986), I should use *Wright Line*[17] analysis to determine that Respondent had an antiunion motive in removing the TS magazines, shifting the burden to Respondent to show that its motive was not "discriminatory" and that it would have barred such publication in any event. It further argues that absent such showing by Respondent, I should find Respondent's conduct violated Sec. 8(a)(1). In *Roadway Express*, the Board, using a *Wright Line* analysis, concluded that the General Counsel has met its burden in establishing that the employer removed a bulletin board commonly used by employees because it contained pro-union, pro-strike literature. In that case, however, the General Counsel had adduced direct evidence, including statements by supervisors, that the employer had removed the bulletin board because it was being used to post pro-union literature. In the present case, as explained above, the evidence of anti-union motivation is at best circumstantial, and I have already concluded that the General Counsel has not met his burden to show that an unlawful motive was present. Moreover, I have concluded that even if such burden was met, Respondent had provided a valid reason for banning the TS publication, and established that the publication would have been removed even in the absence of the union ad.

Thirdly, it should be noted that the TS magazine, as noted above, is *not* "union literature" that employees should be free to distribute in Respondent's premises or free to post in bulletin boards, assuming distribution or posting of other types of literature is also allowed. Rather, it is a third party commercial publication where the Union placed an ad aimed at Respondent, and perhaps aimed at its employees, whom they represent. This third party publication, as described above, also contains numerous ads not related to the Union that Respondent finds objectionable. I am not persuaded that by placing its own ad, the Union somehow converted this third party

[17] 251 NLRB 1083 (1980), enfd. as modified 662 F. 2d 899 (1st Cir. 1981), cet. denied 455 U.S. 989 (1982).

publication into a "union" publication that its members, the employees of Respondent, had a right to have or distribute in Respondent's premises. To hold otherwise would mean that the Union could force Respondent to allow any third-party publication in its premises, regardless of its nature, simply by placing an ad in such publication aimed at Respondent and/or its employees. If the Union wanted its members to see the ad, it had many ways to get a copy into its members' hands, including mailings, copies in the union hall—or even hand delivery. Thus, I am not persuaded that this ad in a third party publication was "protected activity" by Respondent's employees that Respondent had no choice but to allow in its premises.[18]

In light of the above, I conclude that Respondent did not violate Section 8(a)(1) of the Act by barring TS Magazine from its premises, and recommend that this allegation of the compliant be dismissed.

III. Respondent's Failure to Bargain About Changes to its Healthcare Plan

As discussed in the facts section, Respondent learned in December 2013, that the Affordable Care Act (ACA) would require certain changes in its employee health care plan. Among these, was a change requiring that employees be eligible for healthcare benefits after 60 days of employment, which was a significant change from Respondent's plan, which made employees eligible after a year of employment. Beginning in February 2014, Respondent began notifying its bargaining unit employees of this new eligibility period, in order to afford them the opportunity to enroll. It is undisputed that Respondent never notified or bargained with the Union regarding these changes.[19]

The General Counsel and the Union content that the implemented changes were a mandatory subject of bargaining, and that Respondent violated Sec. 8(a)(5) & (1) by failing to notify and bargain with the Union. Respondent avers, in essence, that the change it implemented was pursuant to a Federal mandate under ACA, and that therefore it had no obligation to bargain with the Union about such change. For the reasons discussed below, I agree with the General Counsel and Union that Respondent had an obligation to bargain with the Union about this subject.

It is by now axiomatic that employers must bargain with the collective-bargaining representative of its employees regarding significant, material changes to their wages, hours or working conditions, *before* changing the status quo, if any type of discretion on the employers' part exists in making such changes. *NLRB v. Katz*, supra; *Oneita Knitting Mills*, supra; *Toledo Blade Co.*, 343 NLRB 385 (2004); *Eugine Iovine, Inc.*, 328 NLRB 294 (1999).

While all of the ramifications of ACA and its mandates still need to be sorted out, and it appears undisputed that one of its mandates required Respondent to shorten the waiting period of

[18] I also note that the General Counsel does not offer any suggestions or makes any arguments as to what proper remedial action I should order, if I were to find a violation. Thus, no arguments are tendered or authority provided as to whether, for example, Respondent should be ordered to allow TS Magazine on its premises for a month, 6 months, a year, or indefinitely—or even perhaps on only those occasions when the Union places an ad.

[19] No evidence was proffered by the parties as to whether the changes to the Respondent's healthcare plan involved anything *other* than a change to the waiting period to be eligible. Accordingly, I presume this was the only change.

eligibility for healthcare benefits to 60 days from its existing 1-year period, I am not persuaded that this mandate relieved Respondent of its duty to notify and bargain with the Union before implementing the change. See, e.g., *Latino* Express, 360 NLRB No. 21 (2014). ACA requires employers (and individuals) to comply with certain *minimum* requirements with regard to healthcare coverage, and one of these minimum requirements appears to be that employees be eligible to receive benefits after 60 days of employment. As far as I am aware, there is no provision in ACA that prohibits or precludes employers from granting employees healthcare benefits *before* 60 days of employment, or for that matter offering employees benefits that exceed the minimum standards required by ACA. Thus, Respondent had a certain degree of discretion in deciding how to best comply with ACA. Had the Union been notified of these events, and afforded the opportunity to bargain, it might have been able to propose better terms for its members, and *might* have persuaded Respondent to agree to such better terms. Even if better terms would have never been agreed to by Respondent, the Union might have had suggestions as how to best notify and inform its members about the choices available, and been instrumental in persuading employees to cooperate and participate. This notice and opportunity was never given to the Union, which was shut out of the entire process until it was a fait accompli. Such conduct invariably sends the message to employees that their union is ineffectual, impotent, and unable to effectively represent them. *NLRB v. Hardesty Co.*, 308 F.3d 859, 865 (8th Cir. 2002).

Had Respondent notified and bargained with the Union, and the Union had insisted that Respondent could not implement a mandate of ACA until the parties reached impasse, Respondent could then have implemented, if indeed required by the mandate, and would have had a persuasive argument and valid affirmative defense. This, however, it did not do.

Accordingly, I find that by failing to notify and bargain with the Union regarding the changes to its healthcare policy, Respondent violated Sec, 8(a)(5) and (1) of the Act.

IV. The Statements made by Vladimir Grigorov

As described in the facts section, in early August 2014, Night Shift Manager Grigorov, after overhearing Young tell fellow employee Carlos Pena that he had missed a good (union) meeting, made the uninvited remark to them, "you don't need a union," or "I don't understand why you need a union."[20] The General Counsel (and Union) alleges that this comment was unlawful, in violation of Section 8(a)(1). I disagree.

Grigorov's words do not contain, or imply, a threat or other coercive elements, but rather express an opinion that has been found lawful and permitted under Sec, 8(c) of the Act numerous times by the Board. See, e.g., *Pacific Customs Materials, Inc.*, 327 NLRB 75, 85 (1998);

[20] As discussed in the facts section, I did not credit Young's very last version of these comments (after the ones cited above), to the effect that Grigorov asked "why do you need a union?" I credited the original version, in which the comment was not posed by a question that required an answer. Accordingly, I do not find that Grigorov's comment was an "interrogation," as alleged by the General Counsel.

Cleveland Sales Co., 292 NLRB 1151, 1156 (1989); *Thomas Industries*, 255 NLRB 646 (1981); *Howard Johnson Co.*, 242 NLRB 386 (1979).[21]

While Grigorov's comments may have been uninvited and intrusive, they were certainly not unlawful. Accordingly, I find that Respondent did not violate Sec., 8(a)(1) of the Act through Grigorov's comments, and recommend that allegation of the complaint be dismissed.

V. The Statements by Respondent at the February 2014 Meeting

As discussed in the facts section, at the February 4, 2014 meeting between Respondent and the Union at the offices of the FMCS mediator, Marilyn Moran told the history of the family-run company, explaining that it preferred to keep things that way. Directing her comments at employee Teffera, who was part of the Union's bargaining committee, she then asked "why are you doing this to us?" The General Counsel alleges that this comment by Moran was disparaging of Teffera for supporting the Union and thus in violation of Sec. 8(a)(1). I do not agree.

I note that, as with the prior allegation discussed immediately above, the General Counsel could not cite any cases directly on point to support its argument. Indeed, the General Counsel concedes that the Board has held that words of disparagement alone are insufficient to violate Sec 8(a)(1), *Sears Roebuck & Co.*, 305 NLRB 193 (1991), and that "the Act countenances a significant degree of vituperative speech in the heat of labor relations," *Atlas Logistics*, 357 NLRB No. 37, slip op. at 4 (2011). Nonetheless, the General Counsel argues that such comments violate the Act if made in the context of other coercive statements that suggest that Respondent would not bargain in good faith and that the employees' choice of the Union would be futile. As an example, the General Counsel cites Respondent's comments that they did not like change and would like to keep things as they were. The inherent weakness of this argument is that the General Counsel has not alleged any other comments made at this meeting as unlawful, since it would be hard-pressed to do so, let alone alleged that Respondent was bargaining in bad faith or otherwise conveyed the message that negotiations were futile.

Respondent, on the other hand, cited several examples of cases where employers have uttered either identical or closely similar words as the ones used here ('why are you doing this to us?"), that the Board found not to be unlawful. See, e.g., *McDonald Land & Mining, Co., Inc.*, 301 NLRB 463, 465 (1991); *Springfield Hospital*, 281 NLRB 643 (1986); *Berger Transfer and Storage, Inc.*, 253 NLRB 5, 12 (1980). I cannot distinguish there cases from the present one, and the General Counsel has not even attempted to do so. Accordingly, and in light of the fact that Respondent made no other coercive or threatening statements at this meeting or at any other time, I conclude that Moran's statement did not violate Sec. 8(a)(1) of the Act.[22]

[21] I would note that the only case cited by the General Counsel where the statement "you don't need a union" was found unlawful was one where those words were also accompanied by the statement **" [because] you won't be here long enough,"** which was a clear threat. See, *Bomber Bait Co., Inc.*, 210 NLRB 673, 675 (1974). This case is clearly inapposite.

[22] I would note that in the one instance where the Board found a similar statement ("why are you doing this to me?") to be unlawful, the manager who made the statement also called the employee a "sneak" and a "snake," which was clearly coercive, and changed the entire context. *Pony Express Courier Corp.*, 283 NLRB 868 (1987).

CONCLUSIONS OF LAW

1. Western Cab Company (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Union has been, and continues to be, the exclusive collective-bargaining representative for the purposes of collective bargaining within the meaning of Section 9(a) of the Act of the employees employed by Respondent in the following unit:

> All taxicab drivers employed by Respondent, excluding dispatchers, managers and supervisors as defined in the Act

4. By failing to provide the Union with notice or an opportunity to bargain concerning the discretionary disciplinary action taken with regard to all employees discharged or suspended by Respondent between January 1, 2014 and July 8, 2014, and by failing to provide the Union with notice or an opportunity to bargain concerning changes to the healthcare benefits provided to bargaining unit employees, which were mandatory subjects of bargaining, Respondent violated Section 8(a)(1) and (5) of the Act.

5. The unfair labor practices of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent did not otherwise violate the Act as alleged in the consolidated complaint.

REMEDY

The appropriate remedy for the Section 8(a)(1) and (5) violations I have found is an order requiring Respondent to cease and desist from such conduct and take certain affirmative action consistent with the policies and purposes of the Act.

Specifically, Respondent will be required to bargain with the Union with respect to the disciplinary action taken with respect to all employees discharged or suspended by Respondent between January 1, 2014 and July 8, 2014, and will further be required to bargain with the Union with respect to changes to the healthcare benefits provided to bargaining unit employees. For the reasons discussed above, I decline the General Counsel request to recommend any additional remedies (such as reinstatement and/or backpay) with regard to the disciplined employees. Additionally, Respondent will be required to post a notice to employees assuring them that it will not violate their rights in this or any other related matter in the future. Finally, to the extent that Respondent communicates with its employees by email, it shall also be required to distribute the notice to employees in that manner, as well as any other electronic means it customarily uses to communicate with employees.

Accordingly, based on the forgoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended[23]

ORDER

Respondent, Western Cab Company, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC regarding the disciplinary action taken regarding all employees discharged or suspended by Respondent between January 1, 2014 and July 8, 2014, or prior to imposing such discipline to any other employees in the future.

(b) Failing to bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC regarding changes to the healthcare benefits provided to bargaining unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:

(a) Bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC regarding the disciplinary action taken with respect all employees discharged or suspended by Respondent between January 1, 2014 and July 8, 2014.

(b) Bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC regarding changes to the healthcare benefits provided to bargaining unit employees.

(c) Within 14 days after service by the Region, post at all its facility in Las Vegas, Nevada, where notices to employees are customarily posted, copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[24] If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 28, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. September 2, 2015

Ariel L. Sotolongo
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

In recognition of these rights, we hereby notify employees that:

WE WILL NOT refuse to bargain in good faith with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO/CLC (Union) regarding the disciplinary action taken regarding all employees discharged or suspended by Respondent between January 1, 2014 and July 8, 2014, or prior to imposing such discipline to any other employees in the future.

WE WILL NOT refuse to bargain with the Union regarding changes to the healthcare benefits provided to bargaining unit employees.

WE WILL NOT implement any changes in the wages, hours, or working conditions of our bargaining unit employees, including taking disciplinary action, without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related matter interfere with, restrain, or coerce you in the exercise of rights listed above.

WE WILL, upon request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit concerning terms and conditions of employment:

All taxicab drivers employed by Respondent, excluding dispatchers, managers and supervisors as defined in the Act

WE WILL, before implementing any changes in wages, hours, or other terms and condition of employment, including taking disciplinary action against employees in the above-described bargaining unit, notify and, on request, bargain with the Union regarding these changes.

WESTERN CAB COMPANY

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099

(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-131426 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.